Thus, more than 35 years ago, the Commission already recognized that peppering low power stations in and around urban centers could not be made workable. The best way to serve the public interest and manage the spectrum is to provide for high power stations that can serve as many listeners in metropolitan areas as possible, which is precisely what the Commission, naturally and rationally, has done. The Commission's current goals and LPFM proposals can evidently only be made possible by an *irrational* plan. Obviously such irrationality does not serve the public interest and cannot withstand judicial scrutiny.

VI. The FCC Already Tried a Technically Similar Service—the Class D Stations—and Determined That It Was Not Efficient

Of the Commission's LPFM proposals, the LP1000 and LP100 proposals are so spectrally inefficient that they merit no consideration, in addition to the host of other difficulties they present. The microradio LP10 proposal, by contrast, is as efficient, theoretically, as full power Class A stations.[88] Despite this appearance of adequate efficiency, however, the Commission has already tried a technically similar service, the 10-watt Class D stations, and determined that, in the overall management of radio broadcast services, the Class D stations are not efficient enough.

Ten-watt noncommercial educational stations have existed for decades, predating even the advent of the modern FM broadcast service with Docket 14185. Yet even in that docket, more than 30 years ago, the Commission observed that "in our view . . . the time may well be at hand when proper use of the increasingly crowded educational FM band requires restrictions on the future

---

[88] *See* part III, *supra*. In fact, the Commission itself has informally stated that "[t]here is little difference between a Class D station and a 100 watt minimum Class A station." *Notes on Class D Noncommercial Educational Stations* (visited Mar. 29, 1999) <http://www.fcc.gov/mmb/asd/bickel/d-aside.html>.

authorization and continuance of 10-watt operations . . . ."[89] In the late 1970s, 20 years ago, the Commission finally determined that the time was at hand to discontinue future authorization of 10-watt Class D stations.

In taking action, the Commission recognized that there was a "sharp divergence" in views between the inefficiency of devoting a "significant amount of spectrum space to Class D operations" and the value in the service these stations can provide.[90] In particular, the Commission considered the three basic arguments that were offered in support of Class D stations: "(1) They offer truly local service; (2) they provide training; and (3) they represent a stepping stone to larger facilities."[91] These arguments are not dissimilar to some of the motivations underlying the current *Notice*. However, unlike the current *Notice*, the Commission at that time questioned "whether 10-watt operations still have a significant role to play . . . in fostering minority ownership."[92] Indeed, the Commission recognized a concern that emphasizing the opportunity for minority ownership of 10-watt stations "could give the appearance of directing minority ownership to inferior facilities."[93]

Ultimately, the Commission determined that, "[e]ven granting the value these stations can have and the service they can provide, we still must concern ourselves with the question of efficient

---

[89] *Noncommercial Educational FM Broadcast Stations*, Notice of Proposed Rule Making, FCC 76-240, 41 Fed. Reg. 16973 (Apr. 23, 1976), at ¶ 11 (quoting 31 Fed. Reg. 14755, 14756 (1966)).

[90] *Noncommercial Educational FM Broadcast Stations*, Second Report and Order, FCC 78-384, 44 Rad. Reg. 2d (P & F) 235 (1978), at ¶ 10.

[91] *Id.* at ¶ 17.

[92] *Noncommercial Educational FM Broadcast Stations*, Notice of Proposed Rule Making, FCC 76-240, 41 Fed. Reg. 16973 (Apr. 23, 1976), at ¶ 15.

[93] *Noncommercial Educational FM Broadcast Stations*, Second Report and Order, FCC 78-384, 44 Rad. Reg. 2d (P & F) 235 (1978), at ¶ 20.

channel usage"[94] and concluded:

> Having balanced the competing equities, it has become clear that these low power operations cannot be permitted to function in a manner which defeats the opportunity for other more efficient operations which could serve larger areas, and bring effective noncommercial educational radio service to many who now lack it. When both types of services can no longer be accommodated, action is required. We think the public interest requires moving these low power operations to other channels where they would not impede the development of new or extended educational radio services. Since the commercial part of the FM band already has a Table of Assignments it is easier to accommodate these low power stations in a manner which avoids interference concerns and, equally important, helps avoid uncertainty and unpredictability.[95]

Thus, Class D stations were permitted the opportunity to move to the non-reserved band or to a new Channel 200. Those Class D stations remaining in the reserved band were no longer afforded protection against interference. No additional 10-watt applications were henceforth accepted.

Despite the theoretical efficiency of 10-watt stations, the Commission judged that "[t]he pattern of use [of the NCE band] appeared to be an inefficient one. The Commission concluded that it was important to encourage improved efficiency since large portions of the country did not receive noncommercial educational FM service."[96] Quite significantly, the Commission stated that there was

---

[94] *Id.* at ¶ 22.

[95] *Id.* at ¶ 23.

[96] *Noncommercial Educational FM Broadcast Stations*, Memorandum Opinion and Order, FCC 78-919, 44 Rad. Reg. 2d (P & F) 1685 (1979) ("*Reconsideration of Second Report and Order*"), at ¶ 3. *See also Notes on Class D Noncommercial Educational Stations* (visited Mar. 29, 1999) <http://www.fcc.gov/mmb/asd/bickel/d-aside.html> (stating that the "Commission decided that the continued authorization of Class D stations precluded more efficient operations from larger facilities, which could serve more people and larger areas, and bring effective noncommercial radio service to persons then lacking it. (By analogy, think of a dime on a table, representing a Class D station's service area, which prevents a round circle of paper, representing a larger service area [and sitting on top of the dime], from sitting flat on the same table.)").

"no necessary correlation between the number of persons served and the efficiency of the operation in question."[97] In fact, the Commission concluded that, in actuality, a low power operation in a densely populated area "only masks the innate inefficiency of the 10-watt station's coverage when compared to its potential for causing interference. *The result of labeling the inefficient as efficient is to preclude taking steps to improve matters.*"[98]

In just the same way, the Commission should not now be tempted by the chimera of theoretical efficiency of microradio stations in the abstract. The Commission and the broadcast industry had many, many years of experience with 10-watt stations. Yet, for the overall management of the radio spectrum, the Commission determined that 10-watt stations were an inefficient use of spectrum. Dotting our country's metropolitan areas with microradio stations (or with the significantly more inefficient LP1000 and LP100 stations, for that matter) in the misbegotten notion that somehow local radio is being brought to the people is precisely the type of Orwellian perversion of the order of things that the Commission previously rejected. The Commission need not walk this well-trod path again. Simply labeling nonsense as common sense does not make it so.

VII. Existing Small Market Broadcasters Already Provide Local, Community-Oriented Service on a Daily Basis

The Commission claims that LPFM stations will provide service to urban communities and neighborhoods as well as populations living in smaller rural towns and communities.[99] However,

---

[97] *Noncommercial Educational FM Broadcast Stations*, Memorandum Opinion and Order, FCC 78-919, 44 Rad. Reg. 2d (P & F) 1685 (1979) ("*Reconsideration of Second Report and Order*"), at ¶ 15.

[98] *Id.* (emphasis added)

[99] *See Notice* at ¶ 1.

as demonstrated above, if the technical integrity of the FM band is to be maintained, it is not technically possible to locate virtually any LPFM stations in large urban communities and neighborhoods, leaving LPFM stations to be licensed almost exclusively to small towns and communities. The Commission also asserts that, by its LPFM proposals, it seeks to address "unmet needs for community-oriented radio broadcasting" as well as to promote "additional diversity in radio voices and program services."[100] NCAB and VAB maintain that the Commission's LPFM proposals are not necessary to serve small towns and communities.

To the contrary, existing broadcasters in small markets already do a tremendous job in serving their local communities, and the number of broadcasting opportunities lying fallow in these small communities demonstrates that there is no pent up demand to offer additional, and more spectrally efficient, full power service in these locations. Thus, this country already has an extensive network of community-oriented radio stations, viz. existing small market broadcasters, especially small market AM broadcasters. As shown below, that there are allegedly "unmet needs" in community-oriented radio broadcasting is a false premise. And, very significantly, creation of an extensive LPFM service will, ironically, result in less diversity in radio voices and program services since, in fact, its real result will be the demise of the very community-oriented radio service the Commission claims it wants to foster.

NCAB and VAB fear the Commission has been afflicted by tunnel vision. As a consequence of the Telecommunications Act of 1996, the Commission's attention has been focused to a very large degree on reviewing mergers in the radio industry. As a result of this so-called "consolidation," the Commission imagines that a threat to community radio and to the diversity of radio voices has

---

[100] *Id.*

emerged. "Consolidation," however, has largely bypassed small market community broadcasters. The alleged "consolidation" of the radio industry has been a phenomenon in large markets only. There still remain more than 4000 different owners—different voices—of radio stations in this country. An industry with more than 4000 different market participants can hardly be termed "consolidated" by any rational definition of the term.

In any event, there is no evidence that "consolidation" in large markets has actually led to a decrease in program diversity. To the contrary, there are more stations programming a greater variety of material—including news, talk, black talk, public affairs, sports, business, religion and religious talk, gospel, top 40, oldies, adult contemporary, urban hits, R&B, rock, classic rock, soft rock, progressive, alternative rock, folk, jazz, "light" or "smooth" jazz, country, hot country, easy listening, classical, and ethnic (including, by itself, more than 500 Spanish language stations, salsa, Caribbean, Korean, etc.)—than ever before. It is a simple and basic economic fact that large group owners will not cannibalize their own audiences by eliminating diversity. Profitability is achieved by catering to as many different market niches as possible. In short, "consolidation" is not the threat to community radio and diversity—LPFM is.

Moreover, it appears the Commission has forgotten why this "consolidation" is occurring. Docket 80-90 is the ultimate cause of this "consolidation." In that proceeding, and its progeny, the Commission relaxed, revised, and created numerous rules, the result of which led to the authorization of hundreds of new radio stations. But the marketplace could not support all of these stations, and the industry suffered greatly. To bolster the economically sagging industry, the Commission itself loosened radio ownership restrictions, and, subsequently, Congress, in the 1996 Act, stepped in and lifted the national radio ownership restrictions and further loosened local ownership restrictions. The Commission now, with the *Notice*, appears to be tempted by the same Siren call again. This recent

past, not to mention the gradual destruction of the AM band, ought to be enough to convince the nation's steward of radio broadcasting to turn hard about, for LP1000 is the new Scylla and LP100 the new Charybdis.

The Commission's recent focus on "consolidation" appears to have left it blind to what real small market community broadcasters actually do. NCAB and VAB would like to re-acquaint the Commission with several such broadcasters, as well as the truly local and community-oriented service they provide on a *daily* basis.

Consider, for example, WKMT(AM), Kings Mountain, North Carolina, owned by Jonas Bridges's Bridges Broadcasting Company since its initial sign-on more than 46 years ago on March 12, 1953. WKMT, at 1220 kHz, operates with 1000 watts daytime, 150 watts nighttime in a community of 9400 people. Its limited nighttime service covers a little more than one mile, making it difficult to provide wide coverage of the much-loved local high school sports. WKMT makes itself open to any and all people and organizations in its community. Nearly every religious organization in the community, of all races, is represented with a broadcast. There is a weekly two-hour Spanish-language program directed especially to the many migrant farm workers in the area. The station broadcasts all city council meetings live. WKMT also features three times a week a two-hour program titled "Hometown Talent" which gives exposure to local talent who may or may not ever be heard from again. It is difficult to imagine what voice is not being heard on WKMT in Kings Mountain.

WBRM(AM), Marion, North Carolina, owned by Annette Bryant, is a 5000 watt daytime, 62 watt nighttime Class D station broadcasting at 1250 kHz. Marion, located in a mountainous region, is a town with 4677 residents in a county whose total population is 40,000. WBRM's programming is local, live, and very involved. The station broadcasts five 5-minute local news

shows daily; provides live play-by-play coverage of all local high school football, boys basketball, girls basketball, and baseball games; and carries live broadcasts of virtually all county parades, festivals, hospital health screenings, high school events, and United Way and March of Dimes activities. For more than 22 years, WBRM has presented, daily, a 30-minute public affairs program featuring guests from every facet of community life. The program averages more than 300 guests a year, a tremendous number for a community of this size. WBRM also produces local programming that showcases the community's school children. In addition to its on-air community focus, every person on the station's staff is actively involved in community activities, including emceeing special events for free, serving on non-profit boards, participating in local civic organizations, and doing voice-overs for the local tourism promotion video and narrating tapes for the self-guided tours through the local museum. In the midst of all this local programming, a 30-second spot on WBRM costs just $6.

Mark Media Group, owned by Ardell Sink and his family, is a four-station broadcast group serving four different communities in the western North Carolina mountains. The Sinks have made a conscious decision to devote their lives to small market radio, believing that making a full life is more important than making a living. WKYK(AM), Burnsville, North Carolina, is a 5000 watt non-directional daytime, 250 directional nighttime station broadcasting in stereo at 940 kHz. Burnsville is a town of 1600 in a county of 16,600. WTOE(AM), Spruce Pine, North Carolina, is a 5000 watt non-directional daytime, 100 watt nighttime station at 1470 kHz. Spruce Pine is a community of 2100 in a county whose population is less than 15,000. WISE(AM), Asheville, North Carolina, is a 5000 watt non-directional daytime, 1000 watt directional nighttime station broadcasting in stereo at 1310 kHz. Asheville is the largest city in western North Carolina with a population of 63,000. Finally, WTZQ(AM), Hendersonville, North Carolina, is a 5000 watt

directional daytime, 26 watt directional nighttime station at 1600 kHz. Hendersonville, a popular retirement area, has a population of 7300 in a county of 81,000. Although Burnsville and Spruce Pine are near one another, WKYK and WTOE are programmed separately. Each has its own music format, and each station has its own community and local features, including live coverage of high school sports; five local newscasts daily; and public affairs programming addressing the needs, problems, and events of the communities including local government, the local hospice, arts and crafts, minority concerns, elderly concerns, and agriculture and industry. Both WKYK's and WTOE's format includes coverage of local weather, especially winter storms in this mountainous area; a daily free swap shop/trading post program for listeners to buy and sell items; school lunch menus; lost and found pets and other items; daily obituaries and birthdays; live coverage of grand openings, parades, and community events such as the Crafts Fair in Burnsville and the Mineral and Gem Festival in Spruce Pine; farm reports; and diverse religious programming. WKYK and WTOE have both won numerous awards and recognitions from local community groups for the services the stations render to their communities. WISE and WTZQ provide much the same type of programming as WKYK and WTOE do, except, of course, their focus is on their own diverse communities. The Sinks's stations demonstrate what local community radio is all about.

D J Broadcasting, Inc., owned by David Hoehne and his family, is the licensee of WKDE(FM) and WKDE(AM) in Altavista, Virginia, population 3500. WKDE(FM) is a 6000 watt Class A station broadcasting a primarily country music format; WKDE(AM) is a 1000 watt daytime only gospel station. For more than 30 years, WKDE(FM) has broadcast live local high school football and basketball games, as well as tournament games. The two stations provide extensive local news coverage on a daily basis, and both WKDE(FM) and WKDE(AM) air more than 12 public service announcements each day. In addition, the stations broadcast the annual Uncle Billy's

Day Festival, the Christmas parade, the four hour marathon for the Disabled American Veterans Food Drive, the annual "Our Town" customer appreciation event sponsored by local merchants, and virtually all business grand openings. WKDE(FM) provides the local YMCA with a free three hour broadcast of the opening of the Little League Baseball and Softball season. Each station airs a live one hour church service each Sunday morning, and WKDE(FM), in addition, broadcasts five hours of black gospel music each Sunday, as well as prayers and announcements of church services and meetings. WKDE(AM) covers area obituaries twice daily. The two stations struggle to remain viable community-oriented services. Several 100 kW stations cover Altavista; WKDE(FM) experiences interference from a second adjacent Docket 80-90 drop-in; and the local advertiser base is shrinking, even though spots average just $10 on WKDE(FM) and $4 on WKDE(AM). Many of the staff work part-time and earn less than they could at the local McDonald's.

WMRA(FM), Harrisonburg, Virginia, is the foundation of the WMRA local network of public radio stations in the Shenandoah Valley. WMRA(FM) is a 10.5 kW Class B station broadcasting at 90.7 MHz. Three satellite stations, WMRY(FM), Crozet, Virginia (280 watts, Class A, 103.5 FM); WMRL(FM), Lexington, Virginia (100 watts, Class A, 89.9 MHz); and W233AA, Winchester, Virginia (44 watts, translator, 94.5 MHz), receive their signal off-air from WMRA. Although two of the facilities are in the non-reserved band, all four facilities are licensed and operated as NCE-FM stations. The WMRA network is the only public radio service for much of the Shenandoah Valley and Nelson County, Virginia, reaching, in total, approximately 400,000 people. WMRA runs a very active public service announcements program focusing principally on arts events in the local communities. In particular, WMRA chooses events that receive little or no promotion on commercial radio stations, such as classical, folk, and jazz concerts; community theater and dance performances; nature hikes; museum exhibits and events; science and history

lectures; and similar cultural events. The stations conduct an annual food drive that brings in approximately four tons of food for area food banks. Recently, WMRA produced a CD of various local folk artists, *In the Shadow of the Blue Ridge*, that has facilitated these local musicians getting airplay both locally and nationally. The value of WMRA's programming to the local communities is seen in the fact that the WMRA stations enjoy one of the highest market shares for public radio nationally, with a similarly high share of listener support per capita, yet the budget is in the bottom quarter of all public radio stations, and, given the small size of the market, fundraising is at its saturation point. The WMRA stations are an important alternative voice in the Shenandoah Valley.

Lloyd Gochenour, through WRIS Inc., has been the owner of WRIS(AM), Roanoke, Virginia, since 1954. WRIS, at 1410 kHz, operates with 5000 watts daytime and 42 watts nighttime in a city of 93,749. The station's format is principally inspirational and religious, and it carries many programs of the local area, making itself available to local churches as well as to the schools and colleges in the area. In addition, the station carries farm reports, hosts a local swap shop, and broadcasts numerous public service announcements. After nearly 50 years of community service, the station is finding it difficult to maintain operations. Budget constraints are forcing the station to automate. Yet, currently, the station has air time available that could be more fully used and that the station is willing to make available to those who desire to broadcast. WRIS will likely go dark if LPFM stations are located in Roanoke. The station could certainly not withstand an onslaught of up to 12 LP1000 and 20 LP100 stations in the area.[101] WRIS is just one example of a community radio station that is actively seeking to make itself even more available to those with broadcast interests in its community.

---

[101] *See* Tables 5 and 6, *supra*.

In light of the community service that these stations, and other NCAB and VAB member stations just like them, render on a daily basis, NCAB and VAB challenge the Commission to demonstrate that there remain any "unmet needs" that these community-oriented broadcasters have ignored.

VIII. LPFM Will Devastate Existing Small Market Community Broadcasters

Were the Commission to implement its LPFM proposals, NCAB and VAB believe that small market stations, like those described above, will be crippled. More pointedly, small market minority and women broadcasters will be among those hardest hit. Ironically, it is minority and women would-be broadcasters whom the Commission allegedly seeks to help.

As shown above, the customized survey data provided by Arbitron demonstrate, upon analysis, that small, community broadcasters rely substantially on listenership outside of their stations' current protected contours.[102] On average, more than one third (34.5%) of the surveyed radio listeners of small Class A FM stations reside outside the stations' 60 dBu contours. In the case of some stations, nearly 9 out of every 10 actual listeners live, commute, and work outside of the protected contour of one of their favorite radio stations. If LPFM is implemented as proposed, these small market stations could lose a significant portion of their documented audience, and, consequently, the advertising dollars or contributions that keep these community radio stations on the air.

Station WCZI(FM) is instructive on this point. WCZI, licensed to New East Communications, Inc. in Washington, North Carolina, population 9263, is a Class A station broadcasting with a non-directional antenna, an ERP of 1350 watts, and a HAAT of 149 meters.

---

[102] *See* part IV.B, *supra*. *See also* Table 4, *supra*; Exhibits 5-6.

Because of the flat coastal plain terrain, WCZI's protected 60 dBu contour is a circle 14.9 miles from the transmitter site; its 34 dBu secondary service contour, however, is a circle 46.7 miles from the transmitter site. Located outside WCZI's protected contour but within the station's 34 dBu contour are the region's principal population centers of Greenville (population 57,005), Havelock (20,274), Kinston (24,470), and New Bern (21,770). Located near the periphery of WCZI's 34 dBu contour is Jacksonville (68,380).

As Table 4, *supra*, indicates, WCZI averaged, over the course of 1998, some 13,441 actual listeners. Of these surveyed listeners, more than 86.5%, or 11,633 individuals, actually reside outside WCZI's 60 dBu contour. A consideration of just the Fall 1998 ratings period reveals that 15,300 people, or 87.7% of WCZI's surveyed listeners, reside outside the station's 60 dBu contour. Even a cursory examination of WCZI's contour map in Exhibit 5 demonstrates that WCZI's listeners are firmly established outside the station's 60 dBu contour. These are not listeners who are commuting to Washington, North Carolina, and listening to WCZI on their way to and from work, for obviously Washington's population does not swell by 45% to 90% every work day with every man, woman, and child listening to WCZI. Instead, the vast majority of these surveyed listeners live, commute, and work in or near Greenville, Havelock, Jacksonville, Kinston, and New Bern.

Not surprisingly, the vast majority of the businesses that advertise on WCZI are also located in or near Greenville, Havelock, Jacksonville, Kinston, and New Bern. These businesses spend their advertising dollars to reach WCZI's listeners in their communities who are likely to patronize their businesses. Should 9 LP1000 and 17 LP100 stations go on the air in WCZI's service area if second and third adjacent channel interference protections are eliminated, or even if 1 LP1000 and 5 LP100 stations were to go on the air if current second and third adjacent channel interference protection

standards are maintained,[103] it is clear that these LPFM stations would have a devastating effect—first on WCZI's listenership, then on WCZI's advertisers, and ultimately on WCZI itself.

Those WCZI listeners in the counties of Hyde (to the east), Onslow (to the south), and Wayne (to the west) on the perimeter of WCZI's 34 dBu contour are near the limits of the station's noise-limited range. WCZI must be programming material these people want to hear, and, accordingly, WCZI is likely one of their favorite radio stations. If interference protection standards are reduced or eliminated, it is highly probable that these thousands of documented listeners in WCZI's actual service area will be simply unable to receive a listenable signal from WCZI anymore. In addition, if LPFM stations on second or third adjacent channels to WCZI were sited in Greenville, Havelock, Jacksonville, Kinston, and New Bern, the vast majority of WCZI's actual surveyed listeners would fall into the Swiss cheese holes of the interfering stations' signals and be unable to receive WCZI's signal at all. This is precisely the sort of "deterioration of service, through the assignment of a number of stations the total impact of which upon an existing is substantial" that the Commission long ago acknowledged is to be avoided.[104]

But whether second and third adjacent channel interference protections be maintained or eliminated, the mere presence of anywhere from 6 to 26 new radio stations (not including possible microradio stations) in WCZI's market will likely cripple WCZI economically. WCZI cannot survive solely on advertisers located in Washington, WCZI's community of license, a town with fewer than 9300 people. WCZI, therefore, already competes for its survival with stations located

---

[103] *See* Tables 5 and 6, *supra*.

[104] *Revision of FM Broadcast Rules*, Notice of Inquiry, Notice of Proposed Rule Making, and Memorandum Opinion and Order, FCC 61-833, 21 Rad. Reg. (P& F) 1655 (1961), at ¶ 45; *see also id.* at ¶ 17 & n.7.

in or near the large population centers of Greenville, Havelock, Jacksonville, Kinston, and New Bern. Although new LPFM stations are highly unlikely to garner enough of the advertising pie to survive commercially, they are very likely to take just enough of it for WCZI to be unable to sustain itself.

In sum, it cannot be in the public interest to deprive thousands of people (and perhaps as many as 15,000 or more) of one of their favorite community radio stations for the uncertain—and probably illusory—benefits of LPFM. Furthermore, no full power radio station could survive if it lost upwards of 90% of its listenership. Multiply these effects across the thousands of existing small market community broadcasters and it is clear that the consequences will devastate small market radio as it currently exists. At jeopardy from the Commission's LPFM proposals are more than 32,500 actual surveyed listeners outside the protected contours of just seven small Class A FM stations. Nationwide, millions of listeners could be cut off from their community broadcasters.

Among those who could be hardest hit by the Commission's LPFM proposals are minority and women broadcasters. WCCG(FM), Hope Mills, North Carolina, and WJRV(FM), Richmond, Virginia, are only two examples of such minority-owned and operated stations that could be harmed if LPFM is implemented. WCCG is owned by James Carson and WJRV is currently operated under an LMA and is in the process of being purchased by Alfred Liggins, III, through Radio One, Inc., both of whom are African-American males. WCCG is a 6000 watt ERP Class A station with a HAAT of 84 meters; WJRV is a 2300 watt ERP Class A station with a HAAT of 162 meters. During the course of 1998, WCCG averaged 14,568 surveyed listeners and WJRV averaged 59,209 surveyed listeners. Of these surveyed listeners, nearly 21% of WCCG's listeners, or 3046 individuals, reside outside of WCCG's protected 60 dBu contour, and more than 11.5% of WJRV's

listeners, or 6838 individuals, reside outside of WJRV's protected 60 dBu contour.[105]

Because WCCG's protected contour encompasses the large population center of Fayetteville (77,295) and WJRV's transmitter site is located within the heart of the population center of Richmond (194,173), it is not surprising that a smaller percentage of these stations' surveyed listeners reside outside the stations' protected contours than in the case of WCZI. Nevertheless, these two stations have nearly 10,000 documented listeners who reside outside the stations' protected contours and could be lost were LPFM to be implemented. Although neither WCCG nor WJRV aims to program exclusively to blacks, it is worth noting that 27.7% of the Fayetteville metro area population and 29.1% of the Richmond metro area population are black and that, on average, approximately 72% of WCCG's listening audience and approximately 25% of WJRV's listening audience is black.[106] To the extent blacks who listen to WCCG and WJRV reside outside the stations' protected contours, these minority-owned stations will lose thousands of black listeners if LPFM is implemented as proposed.

WCCG and WJRV are likely to be particularly harmed economically by LPFM as both Hope Mills and Richmond are predicted to be to able to accommodate large numbers of LPFM stations. If second and third adjacent channel interference protections are eliminated, as many as 9 LP1000 and 18 LP100 stations could be authorized from WCCG's tower site alone.[107] The Commission itself predicts that Richmond could be home to 18 LP1000 and 59 LP100 stations if second and third

---

[105] *See* Table 4, *supra*.

[106] *See* Exhibit 7.

[107] *See* Tables 5 and 6, *supra*.

adjacent channel interference protections are eliminated.[108] With up to 27 new LPFM stations in Hope Mills and 77 new LPFM stations in Richmond (not including new microradio stations), the economic pie in both markets will be sliced into so many pieces that the economic viability of the stations becomes questionable. Indeed, WCCG, for one, would not survive if it lost 21% of its listeners, and, consequently, its advertisers.

James Carson and Alfred Liggins, as well as the rest of the membership of NCAB and VAB, are at a loss to understand the Commission's calculus that appears to prize so-called "new" opportunities for minority *would-be* broadcasters over the sweat and equity already invested by *existing* minority broadcasters. The threat LPFM poses to existing minority and women broadcasters is palpable.

As a general matter, NCAB and VAB believe that the Commission's LPFM proposals either will force small market broadcasters off the air or will force them to go to satellite-delivered automatic programming. Either result means a loss of locally-produced programming. The proposals will, therefore, actually increase homogeneity instead of foster diversity.

Because of their relatively small service area, LPFM stations will be hard-pressed to generate much interest among advertisers. Obviously, if LPFM stations cannot generate advertising revenue, they will be unable to subsist as a commercial service. However, existing full power small market stations will be critically hurt when those advertising dollars go to their bigger and stronger full power competitors. And such a course is likely if small Class A stations lose, on average, one third of their audience.

If LPFM is authorized solely as a noncommercial service, the LPFM stations will compete

---

[108] *See Notice*, Appendix D.

for contributions from existing full power NCE stations. This would be devastating to NCE broadcasters if interference protections are eliminated and if noncommercial LPFM stations are scattered throughout the FM band, especially since the effective service area of an NCE station, and thus its contributor base, extends far beyond its nominally protected contour. There could be dozens of such stations in an NCE broadcaster's listening area, crippling its fundraising ability. Furthermore, even a noncommercial LPFM service would harm existing commercial full power stations if second and third adjacent channel interference protection standards are reduced or eliminated as the increased interference would necessarily cause thousands of existing listeners to be unable to receive a listenable signal.

Quite simply, NCAB and VAB submit that the elimination of existing, documented service—either as a result of interference or as a consequence of economic debilitation—is not in the public interest.

IX. LPFM Will Not Necessarily Increase Opportunities for Women and Minorities to Own Broadcast Stations

One of the principal goals of the Commission's LPFM proposal is to "foster opportunities for new radio broadcast ownership."[109] It is no secret that what the Commission hopes to achieve through LPFM, in part, is an increase in minority and female ownership of radio broadcast outlets. It appears that the Commission believes, although it has adduced no supporting evidence, that minorities and females have been frozen out of ownership opportunities as a result of "consolidation" in the radio industry.[110] The hundreds of vacant allotments, as well as the hundreds

[109] *Notice* at ¶ 1.

[110] *See Notice* at ¶ 10.

of existing stations that can be purchased for less than the cost to build a new one, belie this conclusion. Yet whether the Commission's view of ownership opportunities be true or not, it is clear that LPFM cannot be the mechanism to achieve the Commission's ultimate ends.

If LPFM stations in the non-reserved band are to be commercial, then Congress has made it clear that "the Commission *shall* grant the license or permit to a qualified applicant through *a system of competitive bidding* . . . [i]f . . . mutually exclusive applications are accepted for any initial license or construction permit."[111] Therefore, for new commercial licenses or construction permits, the Commission must proceed by an auction system, and, in fact, it has adopted procedures to implement these requirements.[112] However, even with the use of a new entrant bidding credit, there can be no assurance in an auction scenario that a minority or female, vis-à-vis a white male, will be the successful bidder.

If all LPFM stations are to be noncommercial, then, as discussed above, the Commission has yet to resolve the selection methodology for competing applications.[113] In this case, the LPFM *Notice* is premature.

In any event, even if the Commission could construct a legal mechanism to help assure that women and minorities would especially "benefit" from LPFM, NCAB and VAB are concerned (1) that the Commission will have created the *appearance* of directing female and minority broadcasters to inferior facilities and (2) that the Commission will *in fact* have burdened female and minority

---

[111] 47 U.S.C. § 309(j) (emphases added).

[112] *See Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920 (1998), *on reconsideration*, Memorandum Opinion and Order, FCC 99-74 (released Apr. 20, 1999).

[113] *See* part II, *supra*.

broadcasters with inferior facilities. As an initial matter, it is clear that LPFM facilities will be inferior: LP1000 stations, perhaps the most desirable, are, in fact, the least efficient of all station classes, and there could be very few of them in any event. LP100 and LP10 microradio stations, although likely to be much greater in number, are proposed to be secondary services; they are, by definition, second-class stations.

As for NCAB and VAB's first concern, the Commission, as the federal agency charged with regulatory administration of the broadcasting industry, must act even-handedly. It must avoid even the appearance of discrimination. The creation of a second-class service to which the Commission hopes or intends women and minorities will be attracted *looks* inappropriate.

The service areas of LPFM facilities will be so small that LPFM stations are likely to prove to be an economic folly.[114] It will simply not be possible for LPFM broadcasters to attract enough support, either from advertisers or from listeners, to be an economically viable undertaking. For a few LPFM broadcasters, economics will be irrelevant, but for most LPFM broadcasters, especially those whose ambitions run deeper than their pockets, their LPFM dreams will be broken by the stark reality of actually operating a broadcast station. Rather than a boon, LPFM will prove a boondoggle. NCAB and VAB do not believe that the Commission will be doing LPFM licensees, and especially women or minorities, any favors by creating an inefficient, second-class service.

In addition, minority and female owners will not benefit from the potential stigma that may become attached to these LPFM stations in the mind of the public. Members of the public will want

---

[114] The Commission has recently stated that the idea that it must "stand ready to protect stations from their own economic folly may not reflect either the realities of the radio industry or the Commission's current regulatory paradigm." *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules*, Notice of Proposed Rule Making and Order, FCC 98-117 (released June 15, 1998), at ¶ 19 (internal quotation marks and citation omitted) However, with its LPFM proposals it is the Commission that is creating the economic folly.

to know why it is that they no longer receive their favorite radio stations interference-free or throughout their usual driving range, as they are accustomed. When they are told that it is because of the new LPFM station(s) in the area, they will be unlikely to hold such station(s) in high esteem. Thus, an unintended consequence of dropping in hundreds, if not thousands, of new LPFM stations where the laws of physics say they cannot go may well be for the public to develop an antipathy towards them because of the effect they have on the existing services that the public has come to expect and enjoy. To the extent that women and minorities own and operate a disproportionate share of these LPFM stations, they will be tarred with the stigma to a proportionately greater extent. Again, NCAB and VAB question the wisdom of Commission action that may actually hinder, rather than enhance, opportunities for, and community opinion of, women and minorities.

As a trade association representing numerous women and minority broadcasters, NCAB and VAB urge the Commission to consider the many negative ramifications that could flow from creating a second-class service in which women and minority broadcasters become "ghettoized." LPFM is not—and cannot be— an acceptable solution to whatever difficulties women and minorities may face in the broadcasting industry.

X. LPFM Will Not Solve the Pirate Problem

NCAB and VAB commend the Commission for its enforcement actions against radio pirates. But if the Commission believes that by proposing and implementing a LPFM service it will solve or ameliorate the pirate problem, then NCAB and VAB fear the Commission is sadly mistaken.

LPFM will not be a panacea for the pirate problem. Throwing a bone to these dogs will only get the feeder's hand bitten. Pirates, by definition, operate illegally and have no respect for the rule of law. The pirate underground is well-organized, with numerous websites devoted to offering

primers on how to become a radio pirate as well as advocating the abolishment of the Commission altogether.[115]

It is clear that even if the Commission were to eliminate second and third adjacent channel protections and institute all three classes of low power service—which NCAB and VAB strongly oppose—the resulting thousands of new allotments that would become available would still be far from sufficient to grant all would-be broadcasters a license. Many pirates will necessarily come away empty-handed. Moreover, it is far from clear that pirates even want a broadcasting license. Why should a pirate consent to be bound to a fixed frequency and required to comply with government-promulgated rules and regulations when the pirate rejects the Commission's authority to regulate the airwaves in the first place? The enforcement and administrative difficulties that will result from authorizing thousands of new LPFM stations, and turning them over to broadcasting neophytes, will stretch the Commission's already-limited resources beyond their capacity. In this environment, it will become even more difficult to police and prosecute the pirates. Indeed, NCAB and VAB foresee radio anarchists thriving as a consequence of LPFM.

If, to the contrary, the Commission intends primarily for LPFM to benefit churches, community groups, and schools and colleges, then the Commission's LPFM proposals go far beyond

---

[115] *See, e.g.*, *Media Pirates Network* (visited May 7, 1999) <http://www.vorpal.net/pirate> ("[H]ere you will find collected sources intended to help you become a media pirate."); *How to Be a Radio Pirate Home Page* (visited May 5, 1999) <http://www.irrational.org/sic/radio>; Stephen Dunifer, *Micropower Broadcasting—A Technical Primer* (visited May 5, 1999) <http://radio4all.org/how-to.html> (explaining how to construct an illegal low power FM station); *Low Power Broadcasting FAQ* (visited May 5, 1999) <http://www.sasquatch.com/~zane/lowpower.txt> (same); *Abolish the FCC!* (visited May 7, 1999) <http://www.infoshop.org/abolishfcc.html> (self-explanatory); *Screw the FCC* (visited May 7, 1999) <http://www.sasquatch.com/~zane/radio.html> (self-explanatory). These are only some of the dozens of websites devoted to radio piracy. Most sites contain links to other sites providing instruction on building illegal transmitters or advocating the demise of the FCC.

any service that is necessary to satisfy the needs of these groups. If these are to be the beneficiaries, then LP10 microradio stations are more than sufficient for that task, which is why the Commission previously had 10 watt Class D stations. Of course, the inefficiency of these stations became manifest, as discussed above,[116] and the Commission ceased authorizing any new Class D stations.

LPFM (1) will not solve the pirate problem; (2) will not create viable opportunities for female and minority ownership of broadcast stations; and (3) will not, because of the inherent inefficiencies of this low level of service, as demonstrated by the Commission's experience with Class D stations, properly meet the needs of churches, community groups, and schools. Therefore, the Commission's LPFM proposals are tantamount to a quixotic attempt at social engineering that is destined for failure but that will, as an unfortunate side effect, lance holes in the real-world technical integrity of existing FM service.

XI. NCAB and VAB Counter-Proposals

NCAB and VAB reiterate, for all of the above reasons, that they urge the Commission ***not*** *to adopt a LPFM service.* However, to the extent that the Commission proceeds to consider LPFM, then NCAB and VAB make the following recommendations and counter-proposals:

No LP1000 Class. LP1000 is not a low power class of station. Its minimum ERP (500 watts) is substantially greater than the minimum ERP of a full power Class A station (100 watts). LP1000 is also the least spectrum efficient of all proposed classes of "low power" stations.

LPFM for Certain AM Broadcasters. LP100 and LP10 microradio stations, with antenna heights capped at 30 meters, should be permitted only for AM broadcasters limited to daytime-only operation or those AM stations using directional antennas. As demonstrated above, AM broadcasters

[116] *See* part VI, *supra*.

provide vital local programming that is often constrained by the technical limitations and congestion of the AM band. AM daytimers need to broadcast at night and during morning drive time in order to carry local school sporting events, broadcast local government meetings, and provide school closing and other weather-related announcements. The LP100 and LP10 power classes should be used as daytime translators so that AM broadcasters will be able to permeate steel buildings. These low power classes could also be used to fill in an AM station's directional pattern.

LPFM Should Be a Secondary or Tertiary Service. Any new low power or microradio station, including LP1000 stations if the Commission permits such a class, should be accorded only secondary or tertiary status. Full power stations, which are far more spectrally efficient and provide greater service to the public, should not be required to protect any LPFM stations. In fact, the Commission should protect the 34 dBu secondary service area of existing full power stations and permit these new LPFM classes of stations to operate only outside of this newly-protected secondary service contour. Far too much valuable, usable existing service to the public will otherwise be lost.

Existing FM translators and boosters, which are already a secondary service with respect to full power stations, should also be protected from any LPFM stations, not *vice versa*, making LPFM stations, in effect, a tertiary service.[117] Translators are often critical in rural areas with diffused population centers and in areas with difficult terrain. A LPFM service that does not protect translators could cripple a valuable existing service.[118]

In addition, LPFM stations should be required to fully protect the few remaining Class D

---

[117] *See Notice* at ¶¶ 29, 33 (seeking comment).

[118] *Cf. Remarks of FCC Commissioner Gloria Tristani Before the New Mexico Broadcasters Association* (Apr. 30, 1999) <http://www.fcc.gov/Speeches/Tristani/spgt905.html> (discussing importance of the existing translator system and the need for it to continue to thrive in the future and expressing concern that translators not be unduly threatened by LPFM).

stations. Again, a LPFM service that fails to protect Class D stations will result in the loss of valuable existing service to the public.

As a secondary or tertiary service, any LPFM station that causes any actual impermissible interference should be shut down immediately. This is fully in accordance with the Commission's rules with regard to FM translators and boosters, which are licensed as secondary services.[119] In fact, it is the Commission's settled practice to shut down any secondary service that is causing interference to a primary station irrespective of the location of the complainant's location with regard to the primary station's protected service contour.[120] Therefore, if any LPFM station causes any actual interference to the direct reception by the public of the off-the-air signals of any full power station, even outside its protected 60 dBu contour, then the LPFM station should be shut down immediately.

Existing Broadcasters Should Be Permitted to Upgrade First. NCAB and VAB disagree with the fundamental notion that second and third adjacent channel interference protections are not necessary for LPFM, as the Commission is proposing. However, if the Commission ultimately determines that second and third adjacent channel protections serve no useful purpose, then clearly the old rules under which existing full power broadcasters have been operating were too restrictive. If this be so, then fairness and equity dictate that existing full power broadcasters that have not been permitted to broadcast at maximum facilities should be allowed to upgrade first, before LPFM

---

[119] *See* 47 C.F.R. § 74.1203. *See also Notice* at ¶ 90 (seeking comment).

[120] *See, e.g.*, FM Translator Station K242AI/K249DF, Minneapolis, MN, North-Central Christian Broadcasting (MMB Sept. 22, 1998), Letter Ruling at 3.

allotments are made available.[121] Existing stations should be permitted to better serve their listeners. In particular, current short-spaced stations should be granted an opportunity to upgrade their facilities, and the current freeze on FM translators should be lifted.

In addition, so as not to permanently lock any existing station into its existing facilities, the Commission should create, just as did in Docket 80-90, a 10-mile buffer zone, in addition to the normal distance separation requirements, for all existing full power stations in which they could relocate to upgrade.[122] The Commission's reasoning there is fully applicable here:

> Stations operating with larger facilities are more "efficient," from an engineering standpoint, than stations operating with inferior facilities. Thus, [full power] licensees serve the public interest and their own when they improve their facilities. The Commission's interest in providing a buffer area for licensees recognizes the dual benefit obtained.[123]

Again, as in Docket 80-90, existing broadcasters should be given a three year period in which to upgrade, before LPFM stations are licensed.

Ownership. *National Ownership Restriction to One LPFM Station*. A broadcaster should be permitted to own only *one* freestanding low power or microradio station on a national basis.[124]

---

[121] *See Notice* at ¶ 50 (seeking comment).

[122] *See Modification of FM Broadcast Station Rules*, Memorandum Opinion and Order, FCC 84-65, 55 Rad. Reg. 2d (P & F) 903 (1984) ("*Reconsideration Order*"), at ¶¶ 13-14.

[123] *Id.* at ¶ 13 n.9.

[124] NCAB and VAB thus disagree with the Commission's proposal that a national ownership restriction be set at five or ten stations. *See Notice* at ¶ 60. NCAB and VAB do not believe that the elimination of the national ownership cap by Section 202(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, affects ownership restrictions with regard to new low power stations. If treated as a secondary or tertiary service, new LPFM stations are not what Congress contemplated when it removed the national cap on full power "AM or FM broadcast stations." *Cf. Broadcast Radio Ownership*, Order, FCC 96-90, 2 Comm. Reg. (P & F) 376 (1996), at ¶ 4 (stating that the Telecom (continued...)

This one station must fill a true service gap, i.e., where it does not interfere with the usable secondary service area of existing broadcasters, or be a translator for an AM daytimer or directional, as discussed above. Moreover, this one station must advance the medium: It must provide truly local, community-focused programming (no satellite or network programming).

Sale or Transfer Prohibited. A LPFM license cannot be sold or otherwise transferred. This should be so regardless of whatever ownership restrictions the Commission adopts. There should be absolutely no incentive, or possibility, for speculation, trafficking, and flipping of LPFM stations.[125]

Shared Time Required. Shared time should be required for different parties applying for the same license.

Character Qualifications. NCAB and VAB strongly support character qualifications for LPFM broadcasters and agree with the Commission that the same character qualifications should be applicable to both low power and full power broadcasters.[126] All radio pirates should be automatically disqualified from becoming a LPFM licensee. There should be no amnesty program for any radio pirate, nor should any pirate be considered rehabilitated. Pirates have already proven their disrespect for the Commission's authority and the need to properly regulate and administer the public airwaves as well as their disregard for the rule of law. Pirates have already shown they do

---

[124](...continued)
Act does not affect the Commission's previous decisions to include, as stations within a market, "operating commercial *full-power* stations, including daytimers and foreign stations," but to exclude, *inter alia*, translators) (emphasis added)).

[125] NCAB and VAB, therefore, disagree with the Commission's proposal not to restrict or prohibit the sale or transfer of any class of LPFM station. *See Notice* at ¶ 86.

[126] *See Notice* at ¶ 64.

not act in the public interest.[127] As the Commission well knows, their claims of "First Amendment rights" and "civil disobedience" are baseless.[128]

Residency Requirement. For LPFM to be a truly local, community-focused service there must be a residency requirement. NCAB and VAB believe that the owner must live within 15 miles of the transmitter. This distance is nearly double the distance to the 60 dBu signal contour of a LP1000 station at maximum facilities.[129]

Corporate Owners. Corporate ownership should be limited to corporations with no more than 100 shareholders.

Eligibility. Because LPFM should only be a noncommercial service, other than where used as a translator service for AM daytimers and directionals, eligibility should be restricted to only those who qualify as noncommercial licensees under the current rules.[130]

Regulations. NCAB and VAB strongly urge the Commission to adopt regulations implementing the following:

1. Local origination of programming must be required (no satellite or network

---

[127] *See Notice* at ¶¶ 65-67.

[128] *See Notice* at ¶ 8 n.16 (noting the Commission's repeated rejection of the premise that the First Amendment somehow guarantees individuals the right to operate a radio station); *see also Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

[129] NCAB and VAB thus disagree with the Commission's view that there is no need for a residency requirement. *See Notice* at ¶ 61. Because ownership would be limited to one LPFM station under NCAB and VAB's counter-proposal, the concern that certain efficiencies resulting from national multiple ownership would be frustrated by a local residency requirement is obviated.

[130] *See Notice* at ¶ 19 (seeking comment).

programming).[131] The Commission should not rely on its "expectation" that LPFM licensees will naturally produce a significant amount of local programming. Licensees of LPFM, which is intended to be a community-focused service, should not be given the same discretion as full power broadcasters to determine the proper mix of local/non-local programming.

2. It is imperative that any new service be truly noncommercial for *all* LPFM stations, including those in the non-reserved band.[132] Underwriting and government support should not be permitted. As the Commission recognized in Docket 14185, "[O]perations in [the reserved] band must remain not only nonprofit but noncommercial."[133] The same should be true for all LPFM stations.

Because of their small maximum coverage areas, LPFM stations will not be economically viable from a commercial standpoint in any event. NCAB and VAB also strongly disagree with the Commission's apparent belief that neighborhood businesses cannot afford to advertise on full power stations.[134] As shown above, many smaller full power broadcasters offer very inexpensive spot rates, making the existing advertising structure affordable to any business.

3. The studio and transmitter must be co-located. Co-location does not use up auxiliary frequencies, which are already overburdened. LPFM stations should not be permitted to

---

[131] *See Notice* at ¶ 68 (seeking comment).

[132] *See Notice* at ¶¶ 2, 19, 24, 30, 34, 69 (seeking comment). Excepting, as noted above, where LPFM facilities are used as a translator for AM daytimers or directionals.

[133] *Revision of FM Broadcast Rules*, First Report and Order, 33 F.C.C. 309 (1962), at ¶ 69.

[134] *See Notice* at ¶ 69.

use auxiliary frequencies in any event, even if authorized as primary stations.[135]

4. LPFM stations must provide city-grade (70 dBu) service over their principal community of license. NCAB and VAB strongly disagree with the Commission's intention not to allocate LPFM to specific communities and, thus, not to require LPFM licensees to serve listeners in a community of license.[136] Because even a short-spaced Class A station operating at 100 watts ERP must provide city-grade coverage over its community of license, there is absolutely no reason that LP1000 and LP100 stations cannot do the same.[137]

5. All LPFM stations should comply with all of the Commission's current public interest programming requirements.[138] Do would-be LPFM licensees want to become real broadcasters or not? Even the lowest power LPFM station will be utilizing the public's spectrum. With that privilege necessarily comes concomitant responsibilities and certain administrative tasks. NCAB and VAB see no cogent reason why any LPFM broadcasters should be exempted from the standard public interest programming requirements. "Simplicity" is not an excuse to shirk public interest duties. And, if the Commission believes that it has inadequate resources to enforce these

---

[135] *See Notice* at ¶ 20 (seeking comment).

[136] *See Notice* at ¶ 71.

[137] *See FM Broadcast Stations (Short-Spacing Using Directional Antennas)*, Report and Order, FCC 88-406, 65 Rad. Reg. 2d (P & F) 1651 (1989), at ¶ 32 & n.9 (requiring even short-spaced Class A stations to provide "principal city coverage (70 dBu) over their community of license").

[138] *See, e.g.*, 47 C.F.R. §§ 73.1201 (call sign announcements), 73.1208 (taped, filmed, or recorded material), 73.1211 (lottery information), 73.1212 (sponsorship identification), 73.1920 (personal attacks). *See also Notice* at ¶¶ 70-72 (seeking comment).

public interest obligations, then it should not create a LPFM service in the first place.[139]

6. The height of any new low power or microradio station's antenna must be capped. To the extent authorized, LP1000 stations should be capped at 60 meters, and LP100 and LP10 stations capped at 30 meters.[140]

7. All LPFM stations must comply with all the environmental rules that are applicable to full power broadcasters. There is no reason that any radio station should be exempted from the responsibilities and requirements that arise under the National Environmental Protection Act. In particular, all LPFM stations must be required to protect against exposure to radiofrequency radiation since they will largely be in the hands of broadcast amateurs and the dangers are too great.[141]

8. All LPFM stations must comply with the political broadcasting rules that are applicable to full power broadcasters. The political broadcasting rules are statutorily mandated and apply to all "broadcasting stations."[142] NCAB and VAB agree with the Commission's conclusion that it lacks the discretion not to apply these rules to any class of LPFM station.[143]

---

[139] NCAB and VAB, therefore, support the Commission's proposal to require LP1000 stations to adhere to the Part 73 public interest requirements but disagree with the Commission's proposal to not require the same for LP100 and LP10 stations.

[140] NCAB and VAB thus disagree with the Commission's proposal that antenna heights greater than 60 meters HAAT for LP1000 stations or 30 meters HAAT for LP100 stations be permitted, even if subject to an appropriate downward adjustment in ERP. *See Notice* at ¶ 23 n.35, ¶ 30 n.44.

[141] NCAB and VAB, therefore, support the Commission's proposal to apply all environmental rules to LPFM stations. *See Notice* at ¶ 74.

[142] *See* 47 U.S.C. §§ 312(a)(7), 315.

[143] *See Notice* at ¶ 75.

9. All LPFM stations must have EAS equipment and comply with the EAS rules. This is critical. For the Emergency Alert System to be truly national in scope and to protect as many people as possible, there can be no argument that any LPFM station has too little coverage area or too few listeners to require its participation in this critical information service. This is an important duty that any licensed broadcaster should happily assume in exchange for the privilege of using the public's airwaves.[144]

10. All LPFM and microradio broadcasters must use a type-accepted transmitter.[145] An inexpensive $200 filter will assure that a LPFM broadcaster's signal stays on band. This certification requirement would not unduly burden even the smallest operator, and it is critical to preventing unnecessary interference and disruption of both main channel FM broadcasts as well as subcarrier services.

11. Translator or booster stations for use in conjunction with any LPFM station should be prohibited.[146]

* * *

Implementation of these regulations will help assure that any LPFM service will be in the public interest. In addition, NCAB and VAB suspect that if these regulations and ownership restrictions are adopted the Commission will find that the number of would-be LPFM broadcasters will be substantially less than the Commission anticipates.

---

[144] NCAB and VAB, therefore, support the Commission's proposal that LP1000 stations be required to comply with the EAS rules but disagree with the Commission's proposal that LP100 and LP10 stations be exempted. *See Notice* at ¶ 87.

[145] *See Notice* at ¶ 35 (seeking comment).

[146] *See Notice* at ¶¶ 29, 33 (seeking comment).

Conclusion

Low power FM is bad engineering policy and bad social policy. Nearly every aspect of LPFM has already been tried or considered—and rejected—as the history of modern FM broadcasting unequivocally proves. It would be foolhardy to repeat these mistakes, especially since the laws of physics have not changed.

From an engineering policy perspective, the LPFM proposals cannot overcome their inherent technical limitations if the FM spectrum is to maintain any integrity at all. In fact, the Commission's LP1000 and LP100 proposals are far less spectrally efficient than all existing full power station classes. The plain reality of the FM band is that LPFM stations simply cannot be dropped into the current allotment grid without either severely increasing interference or destroying existing service.

From a social policy perspective, the purported goals of LPFM cannot be achieved: LPFM stations cannot be placed in large urban markets; minority and women will not necessarily become the owners of LPFM stations, and, to the extent they do, they may become trapped in the economic folly of inferior facilities; and the pirate problem will not be ameliorated. And, perhaps most significantly, existing community broadcasters, especially small market minority broadcasters, will be harmed the most.

For all of the above reasons, NCAB and VAB respectfully urge the Commission to abandon the notion of creating a new low power FM broadcast service.

Respectfully submitted,

By: _____
Wade H. Hargrove

_____
Mark J. Prak

_____
David Kushner

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center
Suite 1600 (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Counsel for the North Carolina Association of Broadcasters and the Virginia Association of Broadcasters

August 2, 1999